

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Nextel Communications, Inc.

Reston, Virginia

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File No. EB-00-OR-024

NAL/Acct.No. X3262005

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 24, 2000

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Nextel Communication, Inc., apparently violated Section 301 of the Communications Act of 1934 ("Act"), as amended,¹ by operating an unlicensed radio station without Commission authorization. We conclude that Nextel Communication, Inc., is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On February 8, 2000, the Commission received a telephone complaint from a radio service company representing the Jefferson Parish Fire Department. The complainant reported that there was a digitally modulated signal on the fire department's frequency, 851.3625 MHz, that was causing interference to fire communications. Commission records indicated that the Jefferson Parish Fire Department, licensed as the Parish of Jefferson, was the only authorized user in the local area.

3. Still on February 8, 2000, a Commission agent, using a mobile digital direction finding ("MDDF") vehicle, observed these digital radio transmissions and determined the origin of these signals to be an antenna on the roof of a condominium located at 123 Walnut Street, New Orleans, Louisiana. There was no evidence of a Commission authorization for a transmitter operated on this frequency at this location. Commission records indicated that there are only two other licensees in the State of Louisiana: Nextel Communications with nine sites in other locations within the state, and Entergy Services with one site in north Louisiana. Since the condominium manager stated that Nextel had transmitting equipment at this site, the agent contacted Nextel's technical manager to determine if they were responsible for these transmissions. After checking their records, Nextel admitted that they had mistakenly programmed the wrong frequency into a transmitter at this location and that Nextel had no authorization to use the frequency 851.3625 MHz in New Orleans, Louisiana.

4. On February 15, 2000, the Commission's New Orleans Office issued to Nextel License Holdings 1, Inc., an unlicensed operation warning letter for operation of transmitting equipment on 851.3625 MHz at 123 Walnut Street, New Orleans, Louisiana without Commission authorization. On March 17, 2000, the New

¹ 47 U.S.C. § 301.

Orleans Office received a letter from Nextel Communications, Inc., in response to the warning letter. In that letter, Robin Glenny, Regulatory Manager for Nextel, stated, "As previously discussed with your office, Nextel did operate on the frequency 851.3625 MHz due to an administrative error in the list of authorized frequencies at the 123 Walnut Street site."

III. DISCUSSION

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license.²

6. Based on the evidence before us, we find that on February 8, 2000, Nextel Communications, Inc., willfully³ violated Section 301 of the Act by operating radio transmission apparatus without a Commission authorization.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"), the base forfeiture amount is \$10,000 for unlicensed operation. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴ Nextel Communications' violation was willful, and resulted in interference to a public safety entity. Nextel Communications, as a Commission licensee, should fully understand the requirements of the Act. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁶ Nextel Communications, Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violating Section 301 of the Act⁷.

² 47 U.S.C. § 301

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ 47 U.S.C. § 301

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,⁸ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Nextel Communications, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3262005

11. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. X3262005, and must include the NAL/Acct. No. X3262005.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁹

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested Nextel Communications, Inc., 2001 Edmund Halley Drive, Reston, VA 20191.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office, Enforcement Bureau

⁸ 47 C.F.R. § 1.80.

⁹ See 47 C.F.R. § 1.1914.